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Banking and Commerce, Standing
"Committee on (Senate)"

2nd Session, 24th Parliament, 1959

THE SENATE OF CANADA



PROCEEDINGS OF THE STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill C-33, intituled: "An Act
to amend the Public Servants Inventions Act."

L17
The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, MARCH 17, 1959

WITNESS:

Dr. E. R. Birchard, President, Canadian Patents and Development Limited,
Ottawa, Ontario.

REPORT OF THE COMMITTEE

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, Chairman

The Honourable Senators

*Aseltine	Golding	Paterson
Baird	Gouin	Pouliot
Beaubien	Haig	Power
Bois	Hardy	Pratt
Bouffard	Hayden	Quinn
Brunt	Horner	Reid
Burchill	Howard	Robertson
Campbell	Hugessen	Roebuck
Connolly (Ottawa West)	Isnor	Taylor (<i>Norfolk</i>)
Crerar	Kinley	Thorvaldson
Croll	Lambert	Turgeon
Davies	Leonard	Vaillancourt
Dessureault	*Macdonald	Vien
Emerson	McDonald	Wall
Euler	McKeen	White
Farquhar	McLean	Wilson
Farris	Monette	Woodrow—50.
Gershaw		

(Quorum 9)

**ex officio member.*

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate.

MONDAY, March 16, 1959.

"Pursuant to the Order of the Day, the Honourable Senator Brunt moved, seconded by the Honourable Senator Emerson, that the Bill C-33, intituled: "An Act to amend the Public Servants Inventions Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brunt moved, seconded by the Honourable Senator Emerson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNeill,
Clerk of the Senate.

REPORT OF THE COMMITTEE

TUESDAY, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C-33), intituled: "An Act to amend the Public Servants Inventions Act", have in obedience to the order of reference of March 16th, 1959, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, March 17, 1959.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 A.M.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beau-bien, Brunt, Connolly (*Ottawa West*), Croll, Golding, Haig, Horner, Isnor, Kinley, Leonard, Macdonald, McDonald, McKeen, Pouliot, Power, Reid, Thor-valdson, Turgeon, Wall, White, Wilson and Woodrow—24.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-33, An Act to amend the Public Servants Inventions Act, was read and considered.

Dr. E. R. Birchard, President, Canadian Patents and Development Limited, Ottawa, Ontario, was heard in explanation of the Bill and was questioned.

On motion of the Honourable Senator Aseltine it was *resolved* to report recommending that authority be granted for the printing of 600 copies in English and 200 copies in French of the proceedings on the said Bill.

It was *resolved* to report the Bill without any amendment.

At 1.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Tuesday, March 17, 1959.

The Standing Committee on Banking and Commerce to whom was referred Bill C-33, to amend the Public Servants Inventions Act, met this day at 10.30 a.m.

Senator Hayden in the Chair.

The CHAIRMAN: The next bill, which is the last we have before us today, is the Public Servants Inventions Act, and Mr. Birchard, the president of the Canadian Patents and Development Limited, is here. The bill is being distributed now.

Senator Brunt explained the bill on second reading, and there was some debate on it. Now, Mr. Birchard, would you tell us, first, the reason for the amendment which is proposed?

Mr. E. R. BIRCHARD, (*President of Canadian Patents and Development Limited*): Our difficulty, operating under the bill as it stands at the present time, is that Canadian Patents and Development Limited pay for the expense of processing the patents, securing the patents, exploiting them to industry, drafting up the agreements, and any travelling expenses that are required to contact with industry. We have no vote from Parliament, but must turn over any profits that are received through royalties on the invention to the Consolidated Revenue Fund. It is a little difficult to carry on business in that manner.

Senator POULIOT: Well, Mr. Birchard, did you bring us copies of the regulations of your agency, Canadian Patents and Development Limited? In virtue of the Public Servants Inventions Act regulations can be made. Do you have special regulations for your agency?

Mr. BIRCHARD: I don't quite understand what you mean by regulations.

Senator POULIOT: The kind of things that all corporate agencies have in order to specify when the meetings will take place and what will be the quorum and how the patents will be disposed of, et cetera, et cetera.

Mr. BIRCHARD: Yes, sir, there are regular annual meetings of the directors of Canadian Patents and Development Limited.

Senator POULIOT: I do not mean special decisions made at different meetings. I want to know if you have separate regulations that apply to your agency?

The CHAIRMAN: The statute provides for it.

Senator POULIOT: Have you any bylaw?

Mr. BIRCHARD: Yes.

Senator POULIOT: That is what I mean. Bylaws and regulations have the same meaning. Did you bring them with you?

Mr. BIRCHARD: No, I did not.

Senator POULIOT: Do you know them by heart?

Mr. BIRCHARD: No.

Senator POULIOT: Why did you not bring them here to complete your evidence? You are here before a committee of the Senate of Canada and I want some information. I want some precise information and I am definite about it. The Minister told the house that you are only one agency and there are several others and this bill would apply mostly to you. What I said yesterday in the Senate was the way you have proceeded was a technical embezzlement because the money belonged to the Consolidated Revenue Fund. You know it and you have used it. Did you use it in your agency. Did your agency use it, part of the money that was the proceeds from the royalties?

Mr. BIRCHARD: That money was used to pay for the patents and to process the patents which were referred to us by other Government departments.

Senator POULIOT: With whose authorization?

Mr. BIRCHARD: The Ministers concerned referred the patents to us to process and exploit.

Senator POULIOT: Some Ministers did, but not all of them.

Mr. BIRCHARD: The Ministers which referred those inventions to Canadian Patents and Development Limited.

Senator POULIOT: Some of the Ministers, not all of them, because you know very well there are other agencies similar to yours in various departments. You know that.

Mr. BIRCHARD: There is only the one Crown corporation that handles patents the way the Canadian Patents and Development Limited does.

Senator POULIOT: Well, there are other agencies like Atomic Energy Board, Polymer, et cetera.

Mr. BIRCHARD: The Polymer Corporation does not come under the Civil Service Inventions Act.

Senator POULIOT: But it is another agency that looks after patents.

Mr. BIRCHARD: It might look after its own patents. It is a Crown corporation but it does not come under the Public Servants Inventions Act.

Senator POULIOT: Would you contradict what the Minister has said in the House of Commons, that there are other agencies—

The CHAIRMAN: Just a minute.

Senator BRUNT: Hold on now!

Senator POULIOT: Just a minute. If you are not satisfied with it I will ask the committee to have him sworn in.

Senator BRUNT: The witness says a few words and he is immediately interrupted.

Senator POULIOT: I will give him a chance. I want him to have every chance.

Senator BRUNT: Let this gentleman make his entire statement and then, having made the statement, let's ask the questions. I think that is only fair.

Senator POULIOT: He has made his statement and now we are asking questions and I want the full story, if we have to sit here all day.

Senator BRUNT: It doesn't matter to me how long we sit.

Senator POULIOT: I want the truth about the whole thing.

Senator BRUNT: Who says you are not going to get it, but just give him a chance to speak.

Senator POULIOT: I'll give him a chance to speak.

Senator BRUNT: Well, you are not giving him much chance now.

Senator POULIOT: I don't want him to be reluctant to answer.

Senator BRUNT: You are not giving him much chance.

Senator POULIOT: Neither are you.

Senator BRUNT: Let's listen to his statement.

The CHAIRMAN: Order. Senator Pouliot, there is one thing I want to mention to you before you continue your questions. When you mentioned that the Minister in the other place said there are various Government agencies, the witness said—and you may not have heard him—

Senator POULIOT: If he does not know—

The CHAIRMAN: What he said was that there were others like Polymer but they don't come under this statute. That is what he said. Have you any more questions, Senator Pouliot?

Senator POULIOT: Yes, surely.

The CHAIRMAN: Go ahead.

Senator POULIOT: I want answers and if I do not get satisfactory answers I will ask you, Mr. Chairman, to swear the witness. It is a procedure that I have used only once, but with success.

Senator ASELTINE: Let the witness go ahead and give his story.

The CHAIRMAN: No, we are in proper order so far because the witness gave his general explanation, which was very short, as to why they needed this bill to properly use the money. So we have reached the stage of questions.

Senator POULIOT: Now, Mr. Birchard, if Canadian Patents and Development Limited is a Crown corporation do you make any report to Parliament, any annual report to Parliament?

Mr. BIRCHARD: Yes, sir.

Senator POULIOT: How is it that we never get it?

Mr. BIRCHARD: Canadian Patents and Development Limited was organized under the National Research Council, and the annual report of the Canadian Patents and Development Limited is included in the annual report of the National Research Council. Here is our list of directors and the annual report, and the comments made by the Auditor General, in which this revenue earned by royalties from other Government departments is mentioned, and the financial statement.

Senator POULIOT: Thank you. Now, what I want to know, Mr. Birchard, is the number of patents that you have now.

Mr. BIRCHARD: At the present time there are about 300 patents or, I should say, patents or patent applications because from the time you make a patent application until the patent issues may be one or two years.

Senator POULIOT: But if you wait one year to decide about the value of the patent you may lose some rights.

Mr. BIRCHARD: You may have misunderstood me, sir. What I said was that from the time the patent application is made until it issues may take from one to two years. Now, immediately you make your application with your patent office that gives you a date on which your invention was registered with the patent office, and that gives you priority to any other application.

Senator POULIOT: Do you have all of the patents that belong to the Crown?

Mr. BIRCHARD: Oh, no, just those that are referred to the Canadian Patents and Development Limited under the Civil Servants Invention Act. The Government department might wish to process the patent themselves, and under the act they are at liberty to do that.

Senator POULIOT: And will this bill apply only to your agency or to all the similar agencies of the Government?

Mr. BIRCHARD: There is only one agency similar to Canadian Patents Development Limited, so that the bill is drawn so that it applies to Canadian Patents and Development Limited; but should at any time the Government decide to create another patent corporation then that corporation can act on the same basis, or whatever it is established for, without amending this Public Servants Inventions Act further.

Senator POULIOT: You know that the minister in charge of patents is the Secretary of State?

Mr. BIRCHARD: Right.

Senator POULIOT: And did you induce your minister, the Minister of Trade and Commerce, to sponsor this application?

Mr. BIRCHARD: This legislation has been discussed back and forward with the various ministers, as it does not in any way affect the purpose for which the Public Servants Inventions Act was inaugurated, but only affects the Canadian Patents and Development Limited, which comes under the National Research Council, and the National Research Council comes under the Minister of Trade and Commerce, therefore it was decided through Justice, Secretary of State, and the Minister of Trade and Commerce that it should be sponsored by the Department of Trade and Commerce.

Senator POULIOT: You said that your agency had 300 patents.

The CHAIRMAN: Or applications.

Senator POULIOT: Or applications?

Mr. BIRCHARD: Yes.

Senator POULIOT: How many patents, and how many applications?

Mr. BIRCHARD: There will be approximately 250 patents, and 50 applications. Now, a lot of those come from the National Research Council.

Senator POULIOT: Well, do you have all the inventions of the National Research Council?

Mr. BIRCHARD: Oh, yes.

Senator POULIOT: But they are in the same department, under the same minister?

Mr. BIRCHARD: Under the same minister, that is right.

Senator POULIOT: And how many applications have been refused yearly, approximately?

The CHAIRMAN: Refused by whom?

Senator POULIOT: How many applications by civil servants through the heads of the departments, how many applications and inventions have been refused or declined by the Canadian Patents Development Limited?

Mr. BIRCHARD: You mean applications—a development brought up for consideration as to whether it is of value or not; is that what you mean?

Senator POULIOT: Yes.

Mr. BIRCHARD: Since the Public Servants Inventions Act was introduced there have been 357 cases submitted—do you want them broken down by departments?

The CHAIRMAN: No, the total first.

Senator POULIOT: Yes, I want them broken down by departments.

The CHAIRMAN: You want a total, and then by departments?

Senator POULIOT: I want a total, and then by departments.

Mr. BIRCHARD: I will give you first the number of cases on which patent actions have been taken since the Public Servants Inventions Act came into force, and these are the patents that come under the Public Servants Inventions Act. This does not cover the cases we handle for universities, or anything of that kind; National Research Council, 68; Atomic Energy of Canada Limited, 39; Department of National Defence, 41; Department of Veterans Affairs, 1; Fisheries Research Board, 3; Post Office, 4; Department of Northern Affairs, 2; Department of Agriculture, 2; Defence Research Board, 4; National Film Board, 1; Department of National Health and Welfare, 3; Canadian Arsenals, 2; making a total of 170.

Now I will give you the number of cases submitted to Canadian Patents and Development Limited by various Government departments that have been considered from all the various angles, that is whether they will be of value, whether of any interest to the general public, or whether they have been anticipated. The following are the number of cases that have been submitted, considered, and subsequently abandoned: National Research Council, 73; Atomic Energy of Canada Limited, 22; Department of National Defence, 1; Department of Veterans Affairs, 20; Fisheries Research Board, 3; Post Office, 15; Department of Northern Affairs, 1; Department of Agriculture, 1; Central Mortgage and Housing, 1; Department of Transport, 1; and then there are miscellaneous of 49; a total of 187.

Senator POULIOT: How many have been refused?

Mr. BIRCHARD: The last number, the same as we have dropped or abandoned.

Senator POULIOT: Yes, to make it clear.

Mr. BIRCHARD: Yes, to make it clear.

The CHAIRMAN: That will be over 300 that have been abandoned; is that right?

Mr. BIRCHARD: There have been 187 abandoned, the total that have been submitted is 357.

Senator POULIOT: Who decides whether an application should be accepted or rejected; it is a board, is it not?

Mr. BIRCHARD: It is done through various committees, because you have patents submitted in the various fields; there may be chemistry, physics, building research, mechanics, hydraulics, electronics, and all the various other fields; so that it takes a different group for each one, when an invention is submitted it is referred first to our patent officers; they look it over, and from their knowledge they can sometimes determine that the invention has been entirely anticipated and there is no possibility of securing a patent on it, therefore there is no use spending any more money on it because you couldn't get a patent on it. Then if it is considered that it might be patentable a committee is called, which consists usually of the directors of one of the divisions, such as the mechanical engineering division or the chemical division, to study the application to determine if possible whether it is workable, and at the same time from the combined knowledge of that committee to determine whether the product would be of any value if you did make it, and the process that is necessary to develop and produce the product. All this is checked into very carefully; then to double check on that, if it is decided that the development is of interest, we have regular checks with the patent office, our patent officers go into the patent office and search the files before we spend any further money on it to determine whether there is anything in the files that anticipates this patent and whether it would be possible to secure a patent covering that invention. Then if we are still uncertain about it we call in some of our advisers in the various types of industry to get a value on it.

We handle the processing of an invention as fast as we can because once an invention comes up and is written up then we must make sure it is protected.

Senator POWER: Why do you do this? Don't you sort of anticipate or give a judgment prior to a judgment which would be given by the patent office itself on the question of the newness or in its relation to a patent already existing? Why wouldn't you put that up to the patent office because, after all, it makes the final decision?

The CHAIRMAN: Having had some experience in this field can I tell you what the practice is: the practice is when somebody thinks he has an invention he consults a patent lawyer. The patent lawyer then makes a search of the prior art to determine whether the field is covered or whether there is some particular part of the field still free even though it is generally covered in which you might move with this particular application. All those things are determined beforehand because you have to draft your application, give the specifications and prepare the claim. The patent office does not prepare your claims for you, they review them.

Senator POWER: Somebody has to do all this work.

The CHAIRMAN: Yes, but before it goes to the patent office.

Senator POWER: I have not had experience with the patent office but I have had experience with inventors and they are the most persistent people on earth. I cannot imagine a person who thinks he has a good patent being satisfied by the decision of other civil servants who compose this Patents and Development Limited that his invention cannot be patented, and under the act I take it that if he has invented something he has to go through that process. What does he do when he finds that the company is not going to go ahead.

The CHAIRMAN: If this company decides it is not economic to proceed with the patenting of his invention he can get a waiver and go on on his own under the statute.

Senator POWER: That is under the act itself?

The CHAIRMAN: Yes, that is right.

Senator POWER: If your company decides it is no use he can nevertheless persist in his application and go to the patent office direct.

Mr. BIRCHARD: Definitely. The point you bring up is an interesting one, and that is an inventor who has been working on his invention for two to three years gets the idea that his invention is awfully good. One question that is pertinent, when you are talking to this fellow you may ask him would he invest his own money in a patent. We have carefully watched all that in the National Research Council and we have not yet found any inventions that have been turned down by the Canadian Patents and Development Limited, that the inventor although we release it to him, has proceeded to make application with his own money.

Senator POWER: Most of them have no money at all to start with.

Mr. BIRCHARD: This is one place where the act is beneficial to the inventor.

Senator WALL: Mr. Chairman, am I correct, Mr. Birchard, interpreting that waiver as a discretionary waiver at the mercy of the minister.

The CHAIRMAN: Well now, Senator Wall. If the department is not going ahead, do you think the minister would not give the waiver?

Senator WALL: The point is this, that the waiver is not a waiver of right. The minister has to agree to give that waiver.

The CHAIRMAN: Well, can you imagine a minister refusing to transfer when he says, I do not think that is any good and I am not going to do anything about it. I just cannot imagine that situation arising.

Senator POULIOT: What is the profession of the gentlemen who form the body to which the applications for patents are first sent?

The CHAIRMAN: In this organization that receives the material from the inventor?

Senator POULIOT: The minister or the deputy minister sends you an application for a patent.

The CHAIRMAN: It is still a description of an invention.

Senator POULIOT: Yes, it is a description because in the first place the civil servant has taken the matter up with the deputy minister or the minister and it goes to you. To whom do you send it?

Mr. BIRCHARD: Our patent officers look it over and see if we have as much information as is necessary to deal with it.

The CHAIRMAN: The witness says the patent officers in this limited company are the first ones who look at the material that comes in.

Senator POULIOT: Your own patent officers?

Mr. BIRCHARD: Yes.

Senator POULIOT: I would like to know what is the qualification of each of the members of your patent office.

Mr. BIRCHARD: Our chief patent officer is a graduate engineer, and also studied law and is a graduate in law; he has taken a considerable number of courses in chemistry, physics and other fields. He is the chief patent officer and oversees the work of the other patent officers.

Then we have a patent officer familiar with what you might call the mechanical end; that is, electrical, electronics, radar, physics, building research, mechanical engineering and aerodynamics. He is a university graduate and has had a great number of years experience on patents.

On the other side, in the fields of chemistry, biology and that type of thing, our patent officer is a graduate in chemistry and chemical engineering, and has worked in the patent field now for about 12 years.

Senator POULIOT: There are three?

Mr. BIRCHARD: There are three, yes.

Senator POULIOT: And they screen the descriptions that are sent to your agency?

Mr. BIRCHARD: Oh yes.

Senator POULIOT: That is their job?

Mr. BIRCHARD: That is their job.

Senator POULIOT: And besides that, do you have any boards of examiners for patents?

Mr. BIRCHARD: We have various committees, sir, which review them to determine that we may have an invention, and it might be patentable. Then we refer it to another committee to determine the value—

Senator POULIOT: In the first place, the three members of your patent office decide whether the application should be considered or not. They do not have the final say?

Mr. BIRCHARD: No.

Senator POULIOT: It is another committee that makes the decision?

Mr. BIRCHARD: That is correct, sir.

Senator POULIOT: How many committees have you?

Mr. BIRCHARD: We have a committee for each of various fields of activity. We have a committee on biology—this committee can vary, because there are so many different phases in biology, although the Director of Biology is always one of the members of that committee, provided the inventions under consideration is in his field.

Now, we have the same set-up in chemistry: we have the Director of Pure Chemistry, with the scientists who are familiar in the various phases under which he works. In applied chemistry we have the director, and his section heads that are familiar with the field. So on: we have 15 or 20 different committees to consider the patents, because no one committee is knowledgeable in every field.

Senator POULIOT: Are the members permanent or temporary?

Mr. BIRCHARD: That depends. I would say that the director of the division is a permanent member of the committee, if the invention is in his field and would come under his division.

Senator POULIOT: Who selects the members of the various committees?

Mr. BIRCHARD: That is done by the Canadian Patents and Development Limited, the patent officers.

Senator POULIOT: It is done by the three gentlemen you have mentioned?

Mr. BIRCHARD: Yes.

Senator POULIOT: They select the members of the committees?

Mr. BIRCHARD: And at the same time we will leave it to the director to determine and name the persons who are knowledgeable in that field. If there are not sufficient personnel on his staff, we might draw in someone from the Department of Agriculture or the Department of Fisheries to sit in on that committee, if they are really knowledgeable in that field.

Senator POULIOT: Who decides if the invention is to be accepted? It is considered by the patent office and then afterwards by one of the committees, and the committee makes a report. Does the committee decide whether the patent will be accepted or not, or is that matter referred to the Patent Office?

Mr. BIRCHARD: No. The Canadian Patents and Development Limited's officers sit in on those committees, and after discussing the matter backwards and forwards, the committee comes to a conclusion that an application should be filed on that development, or should be rejected, and their reasons why.

Senator POULIOT: To whom does the report of the committee go, to the Patent Office, or to you?

Mr. BIRCHARD: They report to me, also I sit on the committee.

Senator POULIOT: So the Patent Office is composed of the gentlemen whom you have mentioned, and of yourself. There are four in the Patent Office?

Mr. BIRCHARD: That is right; but, there will be one of the patent officers sit in on each committee. If it is in the field of chemistry the patent officer on electronics would not sit in on it, because he is not knowledgeable in the chemistry field.

Senator POULIOT: But the Patent Office consists of three, plus yourself?

The CHAIRMAN: The patent committee.

Senator POULIOT: Your Patent Office.

The CHAIRMAN: Yes.

Senator POULIOT: I will not insist on that. But I would like to know, to whom the report of any committee is sent. Is it sent back to your Patent Office?

Mr. BIRCHARD: It is sent to me.

Senator POULIOT: It goes all around?

Mr. BIRCHARD: Not a very long way, because there is a secretary who sits in the committee and writes up the minutes; a copy of those minutes go to everyone who was on the committee and I have a copy of what the committee decided they would do. Then we go ahead.

Senator POULIOT: You are with the Vice-President and Secretary-Treasurer. Do you ask for the opinion of the vice-president, Dr. Mackenzie?

Mr. BIRCHARD: Dr. Mackenzie is the vice-president, yes.

Senator POULIOT: And you are the president?

Mr. BIRCHARD: I am the president, yes.

Senator POULIOT: And you have consultations with him?

Mr. BIRCHARD: Oh yes.

Senator POULIOT: Do you make decisions alone or with him?

Mr. BIRCHARD: No. It is pretty well the committee that makes the decisions, unless there is an open and shut case and there is no doubt about it.

Senator POULIOT: Who assesses the value of an invention?

Mr. BIRCHARD: When an invention comes to Canadian Patents and Development Limited, it is reviewed first by the patent officers who determine whether it is worth while spending time to review it. If the invention is fairly well described in the original submission, we do some research on other patents to determine whether the invention is not anticipated. If at that point we find from our knowledge that the patent has not been anticipated, then it is referred to a committee.

Now, a committee consists of myself as president of the committee, together with a patents officer who is knowledgeable in that field, together with the secretary of Canadian Patents and Development Limited, the director of the division related to it, and other scientists that are knowledgeable in the same field.

Senator POULIOT: Do they decide about the value of the invention, or the royalties that should be asked for the invention?

The CHAIRMAN: Senator, I understood the witness to say earlier that at that stage they make inquiries in industry in that field to get some appreciation of values and public use and things of that kind.

Senator POULIOT: But who decides about value?

The CHAIRMAN: In the last analysis, I suppose, the president.

Senator POULIOT: You are the one who decides?

Mr. BIRCHARD: Well, I can override the committee, but if the committee recommends that we go ahead with a patent, and before we go ahead every one is agreeable.

The CHAIRMAN: That is not Senator Pouliot's question. His question is, let us assume that you have decided there is some invention there and that you should make some application for a patent, who takes the responsibility for determining the value of that and the question of the royalties you are going to get?

Mr. BIRCHARD: That has to be worked out with the industry and with the Canadian Patents and Development Limited.

Senator POULIOT: When and who makes the decision of accepting, and for what industry?

Mr. BIRCHARD: That is left to the president and vice-president and patent officers.

Senator POULIOT: In other words, yourself? Now, as you are familiar with the value of each invention, what is the total of the 250 inventions that you have now, and what is the prospective value of the 50 applications that are standing?

Mr. BIRCHARD: It is impossible to answer that, sir, because some of the patents cover new chemicals that have never been on the market. Scientists can say that "the thing is developing along that line, but what the volume will be we have no idea at the present time", and it changes from day to day. You might say at the present time "That is a very valuable patent", but by another month someone else has come up with a new idea, and this is obsolete, washed out. It is impossible to tell what the value of our patents will be, and we do not put anything in our financial statement about them.

Senator POULIOT: There is one piece of information you can give to the committee, and that is the amount of the royalties that you receive now.

The CHAIRMAN: What amount did you receive last year?

Mr. BIRCHARD: You have got my financial statement there, Mr. Senator. Royalties from licensing fees, et cetera, received up to March 31, 1958, were \$237,248. The cost of those licensing fees we paid to the United Kingdom and Australians for the use of their patents was \$174,232, so we had \$63,060 net. We have an agreement with National Research Development Corporation in the United Kingdom that we handle their patents in Canada, and they handle our patents in England and on the continent, and we have a similar arrangement with Australia. Then we have considerable expenses over and above that, in that there are patent attorney fees of \$50,938. Those are the fees that we pay the patent attorneys for completing patent applications. Then we have direct promotion expenses, awards to inventors, et cetera, et cetera; and on our operations last year we lost \$3,825.

Senator POULIOT: Now, Mr. Birchard, do you have with the United States Government an arrangement similar to that which you have with the British Government?

Mr. BIRCHARD: It is handled a little differently down there; but there are a number of companies that will take a development for us and do the promotional work, do the development work that is necessary from the time—and act as our agent to do that development work, because we do not have very much money to gamble on that sort of thing.

Senator POULIOT: I have two questions to ask you, then I will be through. One of them is the meaning of the word "exploit" used in the act.

Mr. BIRCHARD: Well, "exploit" according to the dictionary, the way I interpret it, is to take something and secure the best out of it that you possibly can.

Senator POULIOT: One "exploits" a mine.

The CHAIRMAN: That is right. You exploit a development. You exploit an enterprise.

Senator POULIOT: Do you do that sort of thing in exploiting an invention?

Mr. BIRCHARD: We must, with industry. It is quite a job to get industry interested in taking these things up, because there is a certain amount of gamble on it.

Senator POULIOT: Why is that here in the bill when the thing is not done by your agency.

The CHAIRMAN: Yes, it is.

Mr. BIRCHARD: Pardon me, sir, we do it.

Senator POULIOT: You exploit?

Mr. BIRCHARD: Yes.

Senator POULIOT: You exploit for profit or for loss?

The CHAIRMAN: For profit, they hope.

Senator POULIOT: And what do you exploit?

Mr. BIRCHARD: The inventions.

Senator POULIOT: And what inventions do you exploit?

Mr. BIRCHARD: Those that are referred to us by the Research Council and other Government departments.

The CHAIRMAN: And are patentable.

Senator POULIOT: What are they?

The CHAIRMAN: These 250.

Senator POULIOT: But what are they, the 250? If they are sold for royalties they cannot be exploited by a Government office.

Senator BRUNT: When you sell it, is not that exploiting it?

The CHAIRMAN: That is the exploiting, when you make the agreement with somebody else.

Senator POULIOT: They do not mean, fabricating inventions.

The CHAIRMAN: Oh, no.

Senator POULIOT: Well, that is all right. My last question, about awards. Who decides about the awards, and how much do the civil servants get?

Mr. BIRCHARD: The amount of the award that may be paid to the civil servant is set out in the Public Servants Inventions Act, or, the Public Servants Inventions regulations. You will find it under section 11, subsection 1. That is, the amount of the awards. In subsection 2 is set out awards that may be made by any minister for a bright idea. Section 11, subsection 1 sets out the percentage of the royalties that may be paid to an inventor.

Senator POULIOT: How many civil servants receive such awards? Did 250 civil servants each get one award for the 250 inventions which are now held by your office?

Mr. BIRCHARD: There are a number of these inventions, sir, on which we have never got a cent back. In fact, some of them are perhaps before their time, and industry is not interested in even producing them at the present time. That is what they call, maybe, a "dud" patent.

The CHAIRMAN: But the question is, to what extent have you made awards and what is the amount of them? Let us have it in the year.

Senator POULIOT: I want to know about the 250 that have been accepted. They are there, and they represent the brainwork of 250 civil servants or, it may be, 200 if some have made two inventions.

The CHAIRMAN: How many awards have been made?

Mr. BIRCHARD: Please keep in mind that Canadian Patents and Development Ltd are not authorized to pay awards to civil servants of other Government departments until we get this amendment to the bill through, so that any awards that have been made have only been made to inventors from the National Research Council.

The CHAIRMAN: So far.

Mr. BIRCHARD: In 1956-57 there was a total of \$1,422 paid in awards. In 1957-58 there was \$3,423.19 paid in awards. We have not yet been able to compute the 1959 awards because they are not made up until all the royalties are received at the end of the fiscal year, which is the end of March. But that will be much larger. This year at the same time, if this bill goes through, we will pick up the civil servants from other Government departments and get a recommendation from their appropriate Ministers on paying the awards.

The CHAIRMAN: Those are the ones that have not been paid so far because there was some difficulty in having authority to pay out the money?

Mr. BIRCHARD: That is right.

Senator POULIOT: We have the aggregate yearly amount but I would like to know the number of awards that have been granted each year.

The CHAIRMAN: These are only from the National Research Council.

Senator POULIOT: That is all right.

The CHAIRMAN: The number would not be very great.

Senator POULIOT: That is all right, but I would like to have the information from this gentleman.

Mr. BIRCHARD: There were ten.

Senator POULIOT: How many of these applications belonged to the National Research Council?

Mr. BIRCHARD: Those are all National Research Council, ten.

Senator POULIOT: With respect to the 250 how many were from outside and how many from the National Research Council?

The CHAIRMAN: I would imagine that ten are from the National Research Council and the rest must be from all other departments, is that right?

Senator POULIOT: No, but do you expect to make awards to the 240 other inventors?

Mr. BIRCHARD: Oh, no, sir, because some of those patents have not even been licensed. There is no income from them.

Senator POULIOT: I understand that but, by your question, Mr. Chairman, one would have been led to believe that the 240 others were to receive awards.

The CHAIRMAN: That is a potential but out of those 240 the eligible ones would only be those whose patents have been licensed and there is some revenue.

Senator POULIOT: Now, considering the amounts you have mentioned for each year and the number of ten, it means that each award is between \$100 and \$300.

The CHAIRMAN: A year.

Senator POULIOT: Is it a year or is it paid like royalties are?

The CHAIRMAN: I will ask the witness. Tell me, Mr. Birchard, if your awards are paid on a percentage of royalties they would be paid annually, would they?

Mr. BIRCHARD: Yes. They are paid as soon after the end of the fiscal year as we can possibly have them paid.

The CHAIRMAN: Any other questions?

Senator WALL: I would like to pursue a different line of questioning altogether. I cannot rid myself of the feeling that this amendment to section 9, and all the attention that has been given to the Canadian Patents and Development Limited, is misguided. Section 9, subsection (1), talks about any corporate agency of Her Majesty, and the definition section talks about a department, which means a department as defined in the Financial Administration Act, and includes a Crown corporation named in schedule "C", and there are 12 of these agencies set out in schedule "C". My point is that I contend this amendment is directed to any department or any agency which may in effect receive or make money from the control of an invention or a patent, and that all the inventions or patents do not finally rest in this Canadian Patents Development Limited.

From that point of view I think it is rather important for us to understand that the purport of this amendment is not indicated only against this. It could be that some department or some agency may have a major break-through in something, and does not have to refer its break-through to Canadian Patents and Development Limited or, even if it did, it could be that such agency or department could make a tremendous amount of money and that money would be held within that agency and none would flow to the Consolidated Revenue Fund. There must have been some reason for that in the first place. That is the one thing that perturbs me.

The CHAIRMAN: I think you should cease to be perturbed, if I might suggest it, because this act provides for the relationship between the public servant who is an inventor and his appropriate Minister. That is the basic principle of the act, but that appropriate Minister, if he does not want to do it himself, can select some other Minister to whom he will transfer the administration and control of this particular thing and he may transfer the administration and control to any corporate agency of Her Majesty. Now, this agency has been set up as a corporate agency to which the appropriate Ministers will transfer the administration and control of an invention. We have been told by this witness today there are certain Crown companies that process their own inventions, like Polymer. We have no concern with them because if they process their own inventions they do so within the machinery and scope of the legislation they have. So it is true that the Government could set up another patent agency if they wanted to duplicate the features of this, but the responsibility is that of the Minister. He can delegate it to a corporate agency. This is the only corporate agency which exists at the present time to which there has been delegation, for in the case of Polymer there is no delegation. They process within the scope of their own corporate organization.

Senator POWER: Is there not probably an order in council of some kind practically instructing the Ministers to have that kind of thing handed over to this corporation?

Mr. BIRCHARD: There were no direct instructions given to the Ministers but there was a committee set up by Order in Council P.C. 1123, 1955, called the Interprovincial Committee on the Disposition of Patent Rights on Research and Development Contracts.

The CHAIRMAN: And you will notice the language of this bill reads:

Where pursuant to the section the administration and control of any invention or patent has been transferred to a corporate agency... Now, you only deal with that situation.

Senator WALL: Very well. Since we are discussing this problem, there are two questions I would like to ask, one of which is quite simple. The annual salary is \$16,000, and that brings into focus the kind of staff we shall permanently be operating with, and the kind of establishment it will be. I am bringing that to your attention, because as I see the Canadian Patents Development Limited it is a public institution that will search out and study opportunities to cut costs of our great natural resources, reducing industrial wastage; in other words, an operational institution for public service.

The CHAIRMAN: I think you are at the wrong end of the process, are you not, Senator Wall, because the encouragement of all these things should come within the departments of Government where these men who become inventors are working. At that stage I would agree they should have encouragement, but this corporate entity is set up at the other end of the process where with or without encouragement they have developed ideas.

Senator WALL: My last question is this: Is this corporation acting as a public agency able to market patents abroad?

The CHAIRMAN: You mean licence them?

Senator WALL: Yes; in other words, doing an aggressive kind of job. Are we set up to do that kind of thing on a personal enterprise basis?

The CHAIRMAN: I would think if they applied for a Canadian patent the first thing they would do would be to make their application in other countries, and then if you have a patent in Canada you have patent protection in other countries of the world. Is that so?

Mr. BIRCHARD: If we consider it is valuable to do so in other countries.

The CHAIRMAN: Is any of your royalty income coming from the use of any of these patents in countries other than Canada?

Mr. BIRCHARD: Not that \$6,900, but some of our National Research Council patents, yes, revenue comes in from other countries. For instance, we have just offhand received from France approximately \$140,000 in royalties over the period of ten to twelve years. Now we have just cleared with the United Kingdom the difficulty on tax, because the United Kingdom Inland Revenue ruled that we had to pay a tax on royalties of 8 shilling and 2 pence, I think it was, on the pound, which works out at about 42½ per cent. As our tax department in Canada does not require us to retain tax on royalties which we pay to the United Kingdom we have taken up many times with the Inland Revenue in the United Kingdom that it was not fair and perhaps that Canada would have to review their tax situation. Just Monday of this week we finally got a ruling through that we didn't have to pay the tax. We have several things licensed in the United Kingdom. We have as representatives in the United Kingdom the National Research Development Corporation, which corporation was established by the United Kingdom, and they made £5 million available to them, interest free, for the first five years. They were set up after we were. At the end of five years, they set up another £5 million, and extended another five years, in which they did not pay interest.

The CHAIRMAN: Well, that is on the angle of how other countries exploit the development of ideas.

Mr. BIRCHARD: There are similar organizations who are as our representatives in other countries.

Senator POWER: I am curious to know why we are making this retroactive, and why we could not have taken some other method, on account of my ingrained opposition to retroactive legislation, and why it was not possible for any other steps to be taken.

The CHAIRMAN: I don't like retroactive legislation. The only reason I did not object to this one on that ground was that if we ratify what has been done—and that is the effect of this retroactive feature—then we make it possible for this company to recognize in awards all these inventors from which some royalties have been received but who have not been recognized so far.

Senator POWER: Rather than have this act come into force on the 1st of June 1955, personally I would prefer some way of confirming specifically what has been done. This is very broad. I do not remember ever having come across legislation with a declaration of retroactive activity as broad as this.

Senator BRUNT: Senator Power, the Fisheries Improvement Loan Act was retroactive, except that it was not for as long a period of time; it only goes back to December 12, 1958.

The CHAIRMAN: That might be one view. In the view that I have, I thought language.

Senator POULIOT: Mr. Chairman, as a conclusion, was not the procedure put out by this agency, technical embezzlement?

The CHAIRMAN: That might be one view. In the view that I have, I thought they could spend the money all the time. It just shows the meaning I can put on the word "exploit".

Shall we report the bill without amendment?

Carried.

We also need a motion for authority to print 600 copies of the proceedings in English, and 200 in French.

Carried.

The meeting is adjourned.

—Whereupon the meeting adjourned.

